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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-109

ERNEST CHARLES WILSON, VIOLET STEWART GOETCHIUS, MARY C. WILLIAMS and ROBERT B. FROST,
Petitioners,

vs.

JOHN J. HINKLE, FRANCES B. DEVLIN, ONNALEE O. DOHENY, ENNIS McGINLEY, BETTY B. LETTEAU, FRIEDEL A. SCHRAMM JENSEN, GERALD A. GRIMES, CHRIST CHURCH, UNITY, a California non-profit corporation, and CHRIST UNITY MANOR, a California non-profit corporation,

Respondents.

**On Petition for Writ of Certiorari to the Court of Appeal,
Second Appellate District, State of California, Division Two.**

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Opinion Below.

The Opinion delivered in the California Court of Appeal, Second Appellate District, State of California, Division Two, is reported at 67 Cal.App.3d 506, 136 Cal.Rptr. 731. A copy of the Opinion is attached to the Petition herein as Appendix "D".

Jurisdiction.

Respondents do not question the jurisdiction as set forth in the Petition.

Questions Presented for Review.

The Petitioners herein misstate the question presented by this case. The question presented is as follows:

Whether a civil court can take jurisdiction over the instant dispute, involving claims that respondents, the ministers and specified members of Christ Church, Unity, are liable for breach of trust and breach of contract due to an alleged diversion of the Church from the practices of the "Unity" movement to "charismatic" practices.

Constitutional Provisions Involved.

Respondents do not question the constitutional provisions involved as set forth by Petitioners.

Statement of the Case.

Petitioners' primary statement of the case appears to have been set forth under "Brief Summary of the Case", a subsection of "Questions Presented" in the Petition for Writ of Certiorari. A statement of the case is set forth herein because of certain inaccuracies and misleading statements in the summary of the case in the Petition for Writ of Certiorari.

The facts which are the subject of the instant controversy and the proceedings to date can be briefly summarized. Petitioners herein are Ernest Charles Wilson, who served as minister of respondent Christ Church, Unity from 1938 to 1965, and three Church members, one of whom, Goetchius, was alleged to be a General Member and member of the Board of Trustees. (Miss Goetchius died on June 9, 1977.) Respondents are the Church, Reverend Hinkle (the present Minister), certain members of the present Board of Trustees, the present Assistant Minister, two members

who signed the Articles of Incorporation of respondent Christ Unity Manor, a non-profit corporation providing housing for the elderly, and the Christ Unity Manor Corporation.

Petitioners alleged in paragraph 15 of their Complaint that respondent Christ Church, Unity had acquired funds and property for use in "the Church's Unity ministry" and that said contributions were accepted by the Church in trust for said purposes. [CTP 11.]¹

In paragraph 39 of the Complaint, Petitioners alleged various practices by the Church and Respondent Hinkle, its current Minister, purportedly constituting diversion of Church property from trust purposes (*i.e.*, the Unity ministry) and resulting in breaches of trust. Thus, it was claimed that respondent Hinkle engaged in "the charismatic movement" [CTP 18-21] preaching Evangelistic, Pentecostal and Fundamentalist beliefs and practices [CTP 17]; that Christ Church, Unity was no longer used as a Unity Church [CTP 18]; that respondents were not practicing and teaching "Unity" in the Church but were teaching "charismatic" [CTP 19]; that Hinkle had conducted faith healings in the Church accompanied by "speaking in loud voices", "talking in tongues", and "placing on hands", all taking place on Church property [CTP 21]; that the respondents had brought "charismatic literature" into the Church [CTP 22] and had built a housing facility for the elderly in conjunction with the Church [CTP 22-24] all allegedly contrary to a Unity ministry. Furthermore, petitioners purported to state causes of action for con-

¹The Clerk's Transcript of the Appeal from the decision of the Honorable Jerry Pacht, Judge, Superior Court, Los Angeles County, included in the certified record on appeal, is cited "CTP".

spiracy to divert the Church, the Church corporation and Church property based on the above stated allegations and on allegations of paragraph 38 of the Complaint [CTP 18] that Hinkle and respondents Devlin, Doheny and McGinley (present members of the Board of Trustees of the Church corporation) conspired to appropriate and control the Church and its Board and property, and in pursuance of said conspiracy carried forward the various acts alleged in paragraph 39.

Petitioners also apparently claimed breach of contract, alleging that petitioner Wilson requested respondent Hinkle to continue the Unity ministry in the said Church, to adhere to the Unity movement, and to apply all receipts and acquisitions to a Unity ministry, and that defendant Hinkle accepted said request. [CTP 13.] Thereafter, according to the Complaint at paragraph 33, Hinkle "diverted from . . . said Unity ministry in the Church and commenced, and has continued ever since a different ministry of his own concept and choice, contrary to Unity. . . ." [CTP 16.] Pursuant to this alleged "new career", respondent Hinkle allegedly was involved in the various "charismatic" activities listed hereinabove.

Recovery by petitioners, whether pursuant to a trust or contract theory, thus appears to be premised on allegations that respondent Hinkle's present ministry is not a Unity ministry and does not adhere to Unity practice. By way of relief, the petitioners seek to "recover the Church", to dismiss its present ministers and officers, to themselves elect new officers and to recover damages and exemplary damages. [CTP 41-42.]

Respondents demurred on various grounds, primarily relying on the Court's lack of jurisdiction, pursuant to the First Amendment of the Constitution. The Court sustained respondents' Demurrer without leave to amend on the grounds stated in the moving papers, and the petitioners' action was accordingly dismissed. On appeal, the Court of Appeal upheld the order of the court sustaining the Demurrer and dismissing the Complaint, basing its decision on the jurisdictional grounds of demurrer. The California Supreme Court thereafter denied the petitioners' Petition for Certiorari.

When Federal Question Was Raised.

Respondents concur that the issue was raised at the first stage of the action by respondents' demurrer to petitioners' complaint. However, the grounds of the demurrer are misstated in the petitioners' Petition for Writ of Certiorari. The actual grounds of the demurrer (insofar as the grounds were Constitutional) were that the court did not have jurisdiction as the action sought to obtain an award of church property based on a "departure from doctrine" argument, which would require the court to determine whether defendants had departed from traditional "Unity" ministry, and thus to make determinations as to the interpretation of church doctrines and importance of those doctrines to the religion and to award church property on the basis of the interpretation and significance the court assigned to aspects of the doctrine.

REASONS FOR DENYING THE WRIT.

I

The Decision Below Is in Accord With Applicable Decisions of the United States Supreme Court.

The California Court of Appeal in its decision filed February 25, 1977 properly held that civil courts do not have jurisdiction over the instant dispute. The Court relied primarily on the United States Supreme Court decision in *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U.S. 440; 21 L.Ed.2d 658, 89 S.Ct. 601 (1969).

In *Hull*, two local Presbyterian churches had voted to withdraw from the Presbyterian Church of the United States in the belief that certain actions and pronouncements of the general church were violations of that organization's constitution and departures from the doctrine and practices in force at the time of the affiliation of the local churches with the general church. In particular, the local churches objected to the ordaining of women as ministers and ruling elders, the making of pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of bible reading and prayers by children in public schools, and causing members to remain in the National Council of Churches of Christ. (393 U.S. 442, 21 L.Ed.2d 661.)

The two local churches renounced the general church's jurisdiction and authority. In response, the general church, which was hierarchical in structure, proceeded to take over the local churches' property on behalf of the general church.

The local churches then filed suit to enjoin the general church from trespassing on the disputed property. The case was submitted to the jury on the theory that Georgia law implies a trust of local church properties for the benefit of a general church on the sole condition that the general church adhere to the tenets of faith and practice existing at the time of affiliation by local churches. The jury was instructed to determine whether the actions of the general church amounted to an abandonment of original tenets and doctrines. After the jury returned a verdict for the local churches, the Supreme Court of Georgia affirmed, and the United States Supreme Court granted certiorari.

As stated by Justice Brennan, the case presented the question whether:

"The restraints of the First Amendment, as applied to the states through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441; 21 L.Ed.2d at 661.

The Court reviewed various prior decisions regarding Court review of ecclesiastical determinations and concluded as follows:

"First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular

interests in matters of purely ecclesiastical concern." 393 U.S. at 449; 21 L.Ed.2d at 665.

The Court held that the Georgia courts had violated the First Amendment as:

"The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constituted such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrine. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which the departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts to play such a role." 393 U.S. at 450; 21 L.Ed.2d at 666.

The instant case as pled presented a clear attempt to obtain church property based on just such a "departure-from-doctrine" argument. Thus, petitioners pled breach of trust and diversion of trust assets and conspiracy to divert trust assets based on allegations that the respondent church and its minister had departed from teachings and practices of the "Unity" School. Likewise, petitioners claimed breach of contract on grounds that respondent Hinkle had departed from the "Unity" ministry.

If a civil court were to decide said issues, it would of necessity have to make its own interpretation as to what is "Unity" doctrine. It would furthermore have to decide whether the alleged "charismatic practices" were so foreign to the traditional Unity church theology as to require a finding of diversion of trust assets, breach of trust, or breach of contract. These decisions are precisely of the sort which are strictly forbidden under the *Hull* decision, as they are determinations as to "the interpretation of particular church doctrines and the importance of those doctrines to the religion" and as they seek "to award church property on the basis of the interpretation and significance the civil court assigns to the aspects of church doctrine." See 393 U.S. at 441 and 450; 21 L.Ed.2d at 661 and 666.

The United States Supreme Court reaffirmed its position in the recent case of *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich, et al.*, 426 U.S. 696, 49 L.Ed.2d 151; 96 S.Ct. 2372 (1976). The case involved a protracted dispute over the control of the Serbian Eastern Orthodox Diocese for the United States and Canada, during which dispute the Holy Assembly

of Bishops and the Holy Synod of the Serbian Orthodox Church (the Mother Church) suspended and ultimately removed and defrocked the Bishop of the Diocese, respondent Dionisije Milivojevich, and appointed another Administrator of the Diocese.

Dionisije Milivojevich filed suit in the Illinois courts, seeking to enjoin the Serbian Eastern Orthodox Diocese for the United States from interfering with the assets of Illinois church corporations and to have himself declared the true Diocesan bishop.

The United States Supreme Court, per Mr. Justice Brennan, stated as follows:

"Resolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the American-Canadian Diocese. That is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case essentially involves not a church property dispute but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, 'the First Amendment severely circumscribes the role that civil

courts may play in resolving church property disputes.' *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)."

Thus, in the *Serbian Eastern Orthodox* case, the Supreme Court reaffirmed that secular courts cannot interfere in litigation where relief, even relief as to property, turns on the resolution of controversies regarding religious doctrine and practice. The instant case turns on just such a controversy over alleged "charismatic" doctrine and practices at Christ Church, Unity. Accordingly, it is clear that no secular court can have jurisdiction over the action.

II

The Decision Below Is Clearly Correct.

As shown *supra*, the decision of the California Court of Appeal, Second Appellate District is in accord with the United States Supreme Court decisions in *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) and *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Dionisije Milivojevich, et al.*, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976).

The decision therefore is clearly correct.

If the California Court of Appeal had held otherwise, the determination of this lawsuit by a civil court would have required the court to examine in detail the present teachings and practices at Christ Church, Unity, to study the so-called "traditional" Unity doctrine, and to determine whether the practices of Reverend Hinkle were so different from the traditional Unity practice as to constitute a breach of trust or contract.

This determination would of necessity require improper and unconstitutional court interference in religion, by awarding property based on religious doctrine and by intervention on behalf of one group over another based on its religious beliefs.

Conclusion.

It is respectfully submitted that petitioners have wholly failed to sustain their burden of establishing under Rule 19 that there are special and important reasons why the Writ should be granted. As shown hereinabove, the decision of the California Court of Appeal involves a question of federal law which has been settled by the United States Supreme Court, and the decision of the California Court of Appeal—is in accord with prior decisions of the United States Supreme Court, and is clearly correct.

Respectfully submitted,

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